

USB

72

<TARGET><BILL>SB 72</BILL><SUBJECT>SB  
72</SUBJECT><COMM>SJUD27</COMM></TARGET>

Sec. 11.61.123. Indecent viewing or photography.

(a) A person commits the crime of indecent viewing or photography if, in the state, the person knowingly views, or produces a picture of, the private exposure of the genitals, anus, or female breast of another person and the view or production is without the knowledge or consent of

(1) the parent or guardian of the person viewed, or who is shown in the picture, if the person who is viewed or shown is under 16 years of age; and

(2) the person viewed or shown in the picture, if the person viewed or shown is at least 13 years of age.

(b) Each viewing of a person, and each production of a picture of a person, whose genitals, anus, or female breast are viewed or are shown in a picture constitutes a separate violation of this section.

(c) This section does not apply to viewing or photography conducted by a law enforcement agency for a law enforcement purpose.

(d) In a prosecution under this section, it is an affirmative defense that the viewing or photography was conducted as a security surveillance system, notice of the viewing or photography was posted, and any viewing or use of pictures produced is done only in the interest of crime prevention or prosecution.

(e) In this section,

(1) "picture" means a film, photograph, negative, slide, book, newspaper, or magazine, whether in print, electronic, magnetic, or digital format; and

(2) "private exposure" means that a person has exposed the person's body or part of the body in a place, and under circumstances, that the person reasonably believed would not result in the person's body or body parts being (A) viewed by the defendant; or (B) produced in a picture; "private exposure" does not include the exposure of a person's body or body parts in a law enforcement facility, correctional facility, designated treatment facility, or a juvenile detention facility; in this paragraph, "correctional facility" has the meaning given in AS 33.30.901, "designated treatment facility" has the meaning given in AS 47.30.915, and "juvenile detention facility" has the meaning given in AS 47.12.990.

(f) Indecent viewing or photography is a

(1) class C felony if the person viewed or shown in a picture was, at the time of the viewing or production of the picture, a minor;

(2) class A misdemeanor if the person viewed or shown in a picture was, at the time of the viewing or production of the picture, an adult.

History -

(Sec. 1 ch 29 SLA 1995; am Sec. 5 ch 33 SLA 1999)

Revisors Notes -

Subsection (f) was enacted as (c) and subsections (c)-(e) were enacted as (d)-(f), respectively. Relettered in 1995.

Amendment Notes -

The 1999 amendment, effective May 28, 1999, made a section reference substitution at the end of paragraph (e)(2).

Editors Notes -

Under Sec. 2, ch. 29, SLA 1995, this section "applies to all offenses committed on or after August 13, 1995."

Collateral Refs -

Criminal prosecution of video or photographic voyeurism. 120 ALR5th 337.

Decisions -

Consent as defense. - Defendant did not claim that he obtained permission for photography from the wrong person because of a reasonable mistake concerning his victims' ages, so no issue of consent was presented. *Knutsen v. State*, 101 P.3d 1065 (Alaska Ct. App. 2004).

Culpable mental state. - When a defendant obtains permission as required under this section, but the state asserts that, because of the victim's age, someone else's permission was required, the state is obliged to prove that the defendant acted recklessly and with a culpable mental state regarding the victim's age. *Knutsen v. State*, 101 P.3d 1065 (Alaska Ct. App. 2004).

Sec. 11.61.125. Distribution of child pornography.

(a) A person commits the crime of distribution of child pornography if the person distributes in this state or advertises, promotes, solicits, or offers to distribute in this state any material that is proscribed under AS 11.61.127.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.

(c) The possession of 100 or more films, audio, video, electronic, or electromagnetic recordings, photographs, negatives, slides, books, newspapers, magazines, or other materials, including a combination of these items totaling 100 or more, is prima facie evidence of distribution and intent to distribute under (a) of this section.

(d) In this section, "distribution" includes the following, whether or not for monetary or other consideration: delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, exchanging, placing on a computer network or computer system, and providing billing collection, or other ancillary services for or otherwise supporting these activities.

(e) Distribution of child pornography is a

(1) class B felony; or

(2) class A felony if the person has been previously convicted of distribution of child pornography in this jurisdiction or a similar crime in this or another jurisdiction.

Sec. 11.61.127. Possession of child pornography.

(a) A person commits the crime of possession of child pornography if the person knowingly possesses or knowingly accesses on a computer with intent to view any material that visually depicts conduct described in AS 11.41.455(a) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct.

(b) This section does not apply to persons providing plethysmograph assessments in the course of a sex offender treatment program that meets the minimum standards under AS 33.30.011(5).

(c) Each film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in AS 11.41.455(a) that is possessed or accessed in violation of (a) of this section is a separate violation of this section.

(d) In a prosecution under (a) of this section, it is an affirmative defense that the person

(1) possessed or accessed fewer than three depictions described in (a) of this section; and

(2) without allowing any person other than a law enforcement agency to view the depictions, either took reasonable steps to destroy the depictions, or reported the matter to a law enforcement agency and allowed the agency access to the depictions.

(e) In a prosecution under (a) of this section, the prosecution is not required to prove the identity of a minor depicted or that the defendant knew the identity of a minor depicted.

(f) In this section, "computer" has the meaning given in AS 11.46.990.

(g) Possession of child pornography is a class C felony.

Sec. 11.61.128. Distribution of indecent material to minors.

(a) A person commits the crime of distribution of indecent material to minors if

(1) the person, being 18 years of age or older, knowingly distributes to another person any material that depicts the following actual or simulated conduct:

(A) sexual penetration;

(B) the lewd touching of a person's genitals, anus, or female breast;

(C) masturbation;

(D) bestiality;

(E) the lewd exhibition of a person's genitals, anus, or female breast; or

(F) sexual masochism or sadism;

(2) the material is harmful to minors; and

(3) either

(A) the other person is a child under 16 years of age; or

(B) the person believes that the other person is a child under 16 years of age.

(b) In this section, it is not a defense that the victim was not actually under 16 years of age.

(c) In this section, "harmful to minors" means

(1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age;

(2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and

(3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age.

(d) Except as provided in (e) of this section, distribution of indecent material to minors is a class C felony.

(e) Distribution of indecent material to minors is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

Sec. 11.61.129. Forfeiture of property used in indecent viewing or photography or child pornography.

(a) Property used to aid a violation of AS 11.61.123 - 11.61.128 or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123 - 11.61.128 may be forfeited to the state upon the conviction of the offender.

(b) In this section, "property" has the meaning given in AS 11.41.468.

Sec. 11.41.452. Online enticement of a minor.

(a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1) - (7) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.

(c) In a prosecution under this section, it is not necessary for the prosecution to show that the act described in AS 11.41.455(a)(1) - (7) was actually committed.

(d) Except as provided in (e) of this section, online enticement is a class C felony.

(e) Online enticement is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

History -

(Sec. 1 ch 97 SLA 2005)

Effective Date Notes -

Section 1, ch. 97, SLA 2005, which enacted this section, took effect on November 28, 2005.

Editors Notes -

Section 5, ch. 96, SLA 2005, provides that this section applies "to offenses occurring on or after November 28, 2005."

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a

- (1) class B felony; or
- (2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

#### History -

(Sec. 3 ch 166 SLA 1978; am Sec. 1 ch 57 SLA 1983; am Sec. 1 - 3, ch 161 SLA 1990; am Sec. 8 ch 79 SLA 1992; am Sec. 1, 2 ch 65 SLA 2000; am Sec. 1 ch 131 SLA 2004)

#### Cross References -

For crime of distribution of child pornography, see AS 11.61.125.

#### Amendment Notes -

The 2000 amendment, effective May 23, 2000, inserted ", video, electronic, or electromagnetic" and "or aurally" in subsections (a) and (b) and deleted "printed" preceding "material" near the end of subsection (b).

The 2004 amendment, effective September 27, 2004, added paragraph (c)(2) and made related changes.

## Decisions -

"Live performance". - This section covers private, noncommercial live performances; however, "live performance" does not include the situation in which a single adult requests a child to display his or her genitals to that adult in private. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Statutory construction. - Defendant's interpretation of this section under the rule of lenity, alleging that it was absurd that he was permitted to have sex with someone between the ages of 16 and 18, yet he was prohibited from photographing someone between those ages, was not persuasive; the relevant provisions simply refer to a child under 18 years of age, and do not distinguish between child pornography produced or possessed for private purposes and that intended for distribution. *State v. Parker*, 147 P.3d 690 (Alaska 2006).

AS 11.61.127(a) forbids the possession of pornographic material that is generated by the conduct prohibited by AS 11.41.455(a), pornography that was generated by the use of a child under the age of 18; the government had to prove that defendant knew that this child pornography was in their possession and that defendant acted knowingly with respect to the circumstance that the pornography was generated illegally. *Ferrick v. State*, 217 P.3d 418 (Alaska Ct. App. 2009).

Joinder of offenses. - Where defendant was charged with sexual abuse of a minor, unlawful exploitation of a minor, distribution of child pornography, and possession of child pornography stemming from his sexual involvement with his girlfriend's minor daughter, the trial court did not err in denying defendant's motion to sever the sexual abuse charges from the pornography charges because all charges stemmed from defendant's inappropriate relationship with the young girl and were connected. *Ogletree v. State*, - P.3d - (Alaska Ct. App. Aug. 19, 2009).

Solicitation of crime. - Where defendant was charged with soliciting the crime of unlawful exploitation of a minor based on his asking victims to take off their clothes and let him photograph them, defendant's argument that he did not "solicit" the crime because the victims could not be guilty of the intended crime was foreclosed by the provision of AS 11.31.110 that it is no defense that the person solicited could not be guilty of the crime that is the object of the solicitation. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Defendant's convictions for soliciting the crime of unlawful exploitation of a minor which were based on his asking victims to take off their clothes and let him photograph them were erroneous since defendant did not ask anyone else to engage in the prohibited conduct, i.e., inducing a child to engage in one of the sexual activities prohibited by this section, and thus he did not commit the crime of solicitation. *Braun v. State*, 911 P.2d 1075 (Alaska Ct. App. 1996).

Aggravating factors. - Where the superior court found an aggravating factor at the defendant's original sentencing, he faced a sentence more severe than the four-year presumptive term for second felony offenders at the time of his sentencing for exploitation of a minor. *Harris v. State*, 980 P.2d 482 (Alaska Ct. App. 1999).

Conviction and sentence upheld. - See Depp v. State, 686 P.2d 712 (Alaska Ct. App. 1984).

Withdrawal of plea bargain denied. - Where defendant pleaded no contest to three felonies as part of a plea bargain, his decision to plead no contest was not materially influenced by his mistaken understanding concerning the consequences of winning a suppression motion; trial court did not err in denying defendant's motion to withdraw his plea. Parker v. State, 90 P.3d 194 (Alaska Ct. App. 2004).

"Least serious" mitigator held inapplicable. - Defendant's alleged lack of intent to distribute pornographic photographs and videos of children, purportedly evidenced by his concealment of them in a locked briefcase in a closet in his house, even if proven by clear and convincing evidence, did not mandate a "least serious" mitigator. State v. Parker, 147 P.3d 690 (Alaska 2006).

Applied in Qualle v. State, 652 P.2d 481 (Alaska Ct. App. 1982); Harris v. State, 790 P.2d 1379 (Alaska Ct. App. 1990); Parker v. State, 151 P.3d 478 (Alaska Ct. App. 2006).

Cited in Lawrence v. State, 764 P.2d 318 (Alaska Ct. App. 1988); Scroggins v. State, 951 P.2d 442 (Alaska Ct. App. 1998); Labrake v. State, 152 P.3d 474 (Alaska Ct. App. 2007).

Sec. 11.41.270. Stalking in the second degree.

(a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

(b) In this section,

(1) "course of conduct" means repeated acts of nonconsensual contact involving the victim or a family member;

(2) "family member" means a

(A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;

(B) person who lives, or has previously lived, in a spousal relationship with the victim;

(C) person who lives in the same household as the victim; or

(D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;

(3) "nonconsensual contact" means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; "nonconsensual contact" includes

(A) following or appearing within the sight of that person;

(B) approaching or confronting that person in a public place or on private property;

(C) appearing at the workplace or residence of that person;

(D) entering onto or remaining on property owned, leased, or occupied by that person;

(E) contacting that person by telephone;

(F) sending mail or electronic communications to that person;

(G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;

(4) "victim" means a person who is the target of a course of conduct.

(c) Stalking in the second degree is a class A misdemeanor.

History -

(Sec. 1 ch 40 SLA 1993)

History Reports -

For Senate letter of intent in connection with the enactment of this section, see 1993 Senate Journal 1026 - 1027.

Decisions -

Constitutionality. - The potential due process and overbreadth problems in the definition of stalking do not require invalidation of the stalking statutes; rather, those problems should be resolved on a case-by-case basis. *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996).

Sufficiency of evidence. - Grand jury evidence was sufficient for indictment for first-degree stalking, under AS 11.41.260, where there was a protective order in place against defendant who nevertheless made ongoing contact with victim, including numerous hang-up calls to the victim and victim's boyfriend, paging the victim when she attended one of her boyfriend's musical performances, and slashing tires on her and her boyfriend's cars. *Kenison v. State*, 107 P.3d 335 (Alaska Ct. App. 2005).

Construction of "contact". - Inclusion within AS 18.66.100(c)(2) of the phrase "or otherwise communicating" immediately after "contacting" strongly suggests that nonphysical contact must involve some element of direct or indirect communication and does not merely mean coming within view; further, "nonconsensual contact" in this section is not all that is needed for a crime to take place; the contact must also be "repeated," so that it is a course of conduct, and it must place the protected person in fear, and the need for these additional requirements to make stalking a crime argues against a construction that makes merely appearing in the sight of a protected person, without more, a crime. *Cooper v. Cooper*, 144 P.3d 451 (Alaska 2006).

Stalking of ex-wife as domestic violence. - Ex-husband's threatening communications to his ex-wife constituted stalking; these acts by the ex-husband were sufficient support for the issuance of a protective order under AS 18.66.990(3)(A) because stalking in the second degree is a crime involving domestic violence when committed against a former spouse. *McComas v. Kirn*, 105 P.3d 1130 (Alaska 2005).

Legitimate nonconsensual contacts and telephone calls not prohibited. - The stalking statutes do not prohibit telephone calls or other nonconsensual contact made for a legitimate purpose, even when the defendant knows that the person contacted may or will unreasonably perceive the contact as threatening. *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996).

Husband admitted to having been at a mall at a time when his wife, who had sought a protective order against the husband, was also there, but he denied having seen his wife. Only knowing contact was required, but the superior court's error was harmless in holding that contact must be intentional because there was no conduct that amounted to "contacting" within the meaning of AS 18.66.100(c)(2); being in the mere presence of the husband's wife did not mean the husband was

"contacting" his wife; the meaning of "contacting" had a normal meaning, and a nonphysical "contact" did not mean merely coming within view. *Cooper v. Cooper*, 144 P.3d 451 (Alaska 2006).

Stated in *Cook v. State*, 36 P.3d 710 (Alaska Ct. App. 2001).

Cited in *Prentzel v. State*, 169 P.3d 573 (Alaska 2007).

## Cindy Smith

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**From:** Doug Wooliver [dwooliver@courts.state.ak.us]  
**Sent:** Thursday, February 10, 2011 3:43 PM  
**To:** Cindy Smith  
**Subject:** SB 72 Statistics

Hello Cindy. I was unable to attend your Monday hearing on SB 72 (the governor's crime bill), but I did listen to the recording of the hearing. During that hearing the committee wondered how many cases would be impacted by the increased penalties reflected in sections 3, 4 and 5 of the bill. I asked our data people how many times those offenses were charged in FY 10. There were 4 cases of online enticement under AS 11.41.452(d) (section 3) and 1 case under AS 11.41.452(e) (section 4). There were 7 cases filed under AS 11.41.455, (section 5 of the bill), though I can't tell from the numbers I received if any were under the provision that already makes these a class A felony.

Although whenever we compare case numbers with others in the criminal justice system we invariably end up with slightly different numbers, our numbers seem consistent with those included in the Department of Corrections fiscal note (an average of five cases per year for these three case types). If the committee's question is whether there are a lot of these case or just a few, I think the answer is just a few.

Doug



February 16, 2011

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Re: **Senate Bill 72**  
**ACLU Review of Constitutional Issues**

Chair French, Vice-Chair Wielechowski:

Thank you for the opportunity to submit written testimony with respect to Senate Bill 72.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that respect, we wish to advise you of constitutional issues with the Bill.

As you may know, the ACLU of Alaska Foundation is currently representing several Alaska bookstores and others in *American Booksellers Foundation for Free Expression (ABFFE) v. Burns*. The federal court has already granted a preliminary injunction, on First Amendment grounds, against AS 11.61.128(a).

Section 9 of S.B. 72 would narrow AS 11.61.128(a) to only criminalize the distribution of material “harmful to minors” by an adult if the recipient is under 16 years old and the adult is reckless regarding the recipient’s age or the adult believes the recipient is less than 16 years old. The legislation would also add a knowledge requirement as to the content being sent to the minor.

This bill is an improvement on AS 11.61.128(a) which was enjoined October 21, but even with these changes the law would still violate the First Amendment and the Commerce Clause of the US Constitution. We welcome the opportunity to work with the Attorney General and this Committee to amend Section 9 to make it constitutionally sound. We believe that modest changes to the bill would cure the constitutional problems in Section 9 while still providing law enforcement with the means to protect minors from adults looking to prey on them.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our thoughts.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Senator Joe Paskvan, [Senator\\_Joe\\_Paskvan@legis.state.ak.us](mailto:Senator_Joe_Paskvan@legis.state.ak.us)  
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# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 1  
 Bill Version SB 72  
 (S) Publish Date 1/26/11

Identifier (file name): LL1840-DPS-DET-01-12-11 Dept. Affected Public Safety  
 Title "An Act relating to the crimes of stalking, online enticement... of a minor, related offenses, and misconduct..." Appropriation Alaska State Troopers  
 Allocation AST Detachments  
 Sponsor Rules Committee  
 Requester Governor OMB Component Number 2325

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**Why this fiscal note differs from previous version**

Not applicable, initial version.

Prepared by Lt. Rodney Dial  
 Division Alaska State Troopers  
 Approved by Joseph Masters, Commissioner  
Department of Public Safety

Phone 907-247-4480  
 Date/Time 1/24/11 2:20 PM  
 Date 1/12/2011

**Analysis**

**This bill expands the crime of stalking by adding to the definition of nonconsensual contact, monitoring the victim with a GPS device and using or installing a device to record or photograph events concerning the victim. It also increases penalties for unlawful exploitation of a minor, online enticement of a minor, and provides for the prosecution of offenders from out of state. Finally, this bill adopts new offenses to include: sending explicit images of a minor, and misconduct involving confidential information.**

**Passage of this legislation will have no fiscal impact on the department.**

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 2  
 Bill Version SB 72  
 (S) Publish Date 1/26/11

Identifier (file name): 1840-LAW-CRIM-01-11-11 Dept. Affected Law  
 Title An act relating to crimes of stalking, online enticement, and exploitation Appropriation Criminal  
of a minor, harassment, distribution of indecent material to a minor, and misconduct. Allocation Criminal Justice Litigation  
 Sponsor Rules  
 Requester Request of the Governor OMB Component Number 2203

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**Why this fiscal note differs from previous version**

Prepared by Dave Blaisdell, Director  
 Division Administrative Services  
 Approved by John J. Burns, Attorney General  
Department of Law

Phone 465-3673  
 Date/Time 1/11/11 12:00 AM  
 Date 1/11/2011

**Analysis**

This bill amends the law relating to stalking by adding to the definition of nonconsensual conduct methods of contacting people with modern technology such as global positioning systems. It makes a clarifying amendment to AS 11.51.100, which prohibits endangering the welfare of a minor. It adopts new statutes to prohibit sending an explicit image of a minor and misconduct involving confidential information. It also increases the penalties for the crimes of online enticement of a minor and unlawful exploitation of a minor. The bill makes it clear that the commissioner of corrections may, in his or her discretion, provide supervised probation to a person on probation for conviction of a misdemeanor.

Although the bill would adopt new crimes we believe that they can be prosecuted with current resources.



## FISCAL NOTE

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. SB 72

### Analysis

DOC averages two new incarcerations per year for the crime of enticement of a minor. This bill would increase the penalty for this crime from a Class C felony to a Class B felony. This change has the potential to increase mandays by 10,220 in FY12 thru FY17. Applying the current cost of care (\$136.44 per day), the increase of cost could be in the range of \$0.0 to \$1,394.44 to DOC.

DOC averages two incarcerations per year for the crime of online enticement of a minor. This bill increases the penalty for this crime from a Class B felony to a Class A felony if the defendant was, at the time of the offense, a registered or required to register as a sex offender or child kidnapper. This would increase the penalty three years. Applying the current daily cost of care (\$136.44 per day), this could potentially increase costs in the range of \$0.0 to \$747.00 to DOC.

DOC averages one new incarceration per year for the crime of unlawful exploitation of a minor. This bill would increase the penalty for this crime from a Class B felony to a Class A felony. This would increase the penalty three years. This has the potential to increase mandays by 5,475 beginning in FY12 thru FY17. Applying the current daily cost of care (\$136.44 per day) could potentially add costs in the range of \$0.0 to \$747.00 to DOC.

Other provisions that the department is unable to quantify at this time but will closely monitor for potential fiscal impact are as follows:

- Adding Monitoring a Person with a Global Positioning Device or Similar Technology Means
- Adding Child Kidnapper to 2(A) under AS12.63
- Adding Sending and Explicit Image of a Minor in the Degree and Second Degree to Statute
- Adding Crimes Involving Minors Committed Out of State, Specifically Online Enticement to Statute
- Adding Online Enticement of a Minor to Statute

# STATE OF ALASKA

## DEPARTMENT OF LAW CRIMINAL DIVISION

## SEAN PARNELL, GOVERNOR

**Mailing:** PO Box 110300  
Juneau, AK 99811-0300  
**Delivery:** 123 4<sup>th</sup> Street, Ste. 717  
Juneau, AK 99801  
**Phone:** (907) 465-3428  
**Fax:** (907) 465-4043

January 27, 2011

The Honorable Hollis French, Chair  
Senate Judiciary Committee  
Alaska State Capitol, Room 417  
Juneau, Alaska 99801

Re: Senate Bill 72 -- relating to stalking and child exploitation

Dear Senator French:

I am writing to request that you schedule Senate Bill 72 for a hearing in the House Judiciary Committee at your earliest convenience. SB 72 is a bill that builds on and refines legislation adopted by the legislature in the past several years to address the serious problems of sexual exploitation and domestic violence.

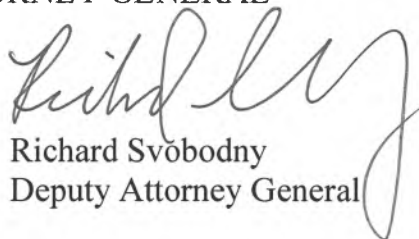
The bill expands the crime of stalking to prohibit placing a person in fear of death or physical injury using technology such as global position devices or devices that invade, record or photograph events in private places like the home or office. It also addresses the issue of young people sending explicit images of themselves to others in a way that seeks to protect the young person.

A sectional analysis is attached that describes each provision of the bill. Thank you for your consideration of this request.

Sincerely,

JOHN J. BURNS  
ATTORNEY GENERAL

By:

  
Richard Svobodny  
Deputy Attorney General

**SB 72**  
**STALKING AND EXPLOITATION OF A MINOR**  
**Sectional Analysis (Revised)**

**Sections 1 and 2** expand the crime of stalking by amending the definition of “nonconsensual contact”. Stalking prohibits a person from engaging in a course of conduct that places another in fear of death or physical injury. “Course of conduct” is defined as repeated acts of nonconsensual conduct. The bill adds two ways that a defendant may contact a victim that is beyond the victim’s consent. First, it includes following or monitoring the victim with a global positioning device. Second, it includes installing or attempting to install a device for observing, recording, or photographing events in the home, workplace, or vehicle of the victim, or on the victim’s personal telephone or computer.

**Section 3** raises the classification of the crime of online enticement of a minor for a person who is not required to register as a sex offender or child kidnapper from a class C felony to a class B felony. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would be to raise the penalty from a range of zero to two years for a first offense (maximum term of five years) to a range of five to 15 years for a first offense (maximum term of 99 years). Also refer to section 12 of this analysis.

**Section 4** raises the classification of the crime of online enticement of a minor for a person who is required to register as a sex offender or child kidnapper from a class B felony to a class A felony. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would be to raise the penalty from a range of one to three years (maximum term of 10 years) to a range of 15 to 30 years for a first offense (maximum term of 99 years). Also refer to section 12 of this analysis.

**Section 5** raises the classification of the crime of unlawful exploitation of a minor from a class B felony to a class A felony for all offenders. Under current law the offense is a class A felony if the person has previously been convicted of unlawful exploitation of a minor, and it is a class B felony for other offenders. This change, in addition to the amendments to AS 12.55.125(i) in the bill, would be to raise the penalty from a range of two to 12 years or five to 15 years (depending on whether it is a first or second offense) to a range of 15 to 30 years for a first offense. Also refer to section 12 of this analysis.

**Section 6** amends the crime of endangering the welfare of a child in the first degree by prohibiting a parent or guardian from leaving a child under 16 years of age with a person who is required to register as a child kidnapper. The law currently prohibits this conduct if the parent or guardian leaves a child with a person required to register as a sex offender.

**Section 7** adopts a new crime – sending an explicit image of a minor. It would prohibit publishing or distributing an image of a minor’s genitals, anus, or female breast if the minor is under 16 years of age and the publication or distribution was without the consent of the parent or guardian of the minor. The conduct would not apply to a minor under 16 years of age who publishes or distributes the minor’s own image. The prohibited conduct would be a class B misdemeanor (maximum term of imprisonment 90 days) if the person publishes the image to one or two others; a class A misdemeanor (maximum term of imprisonment one year) if the person publishes the image to three or more others; and a class C felony (maximum term of imprisonment five years) if the person publishes the image on the Internet.

**Section 8** makes a conforming amendment to AS 11.61.120(a)(6), harassment in the second degree, to make it clear that the new crimes of sending an explicit image of a minor in **Section 7** are not included in the crime of harassment in the second degree.

**Section 9** makes two amendments to the crime of distribution of indecent material to minors; first, to clarify that the person must know that the material distributed depicts the prohibited conduct; and second to clarify that if the minor to whom the material is sent is under 16 years of age, the defendant must be reckless as to that circumstance.

**Section 10** adopts two new crimes – misconduct involving confidential information in the first and second degrees. The second degree offense prohibits a person from obtaining the confidential information about another person without legal authority or consent to do so. This conduct would be a class B misdemeanor (maximum term of imprisonment 90 days).

Misconduct involving confidential information in the first degree would prohibit a person from violating the second degree prohibition *and* using the confidential information to commit a crime or to obtain a benefit to which a person is not entitled, or injure or deprive another person of a benefit. This conduct would be a class A misdemeanor (maximum term of imprisonment one year).

**Section 11** clarifies that a person may be prosecuted for online enticement of a minor and for sending an explicit image of a minor if the minor whose image is published, or with whom the person communicated, was in this state, even if the defendant was in another jurisdiction at the time he or she committed the prohibited acts.

**Section 12** amends AS 12.55.125(i) (terms of imprisonment for persons who commit sex offenses) by conforming the terms of imprisonment for persons who commit unlawful exploitation of a minor or online enticement of a minor to the correct level in accord with the changes in **Sections 3 – 5** of the bill.

**Section 13** clarifies the law by stating that while the Commissioner of Corrections provides probation officers to the superior court for the active supervision of person on probation for felony offenses, the Commissioner may, at his or her discretion, also provide probation officers for the active supervision of persons released for misdemeanor offenses.

**Sections 14 and 15** include the applicability and effective date provisions.

**SB 72**  
**STALKING AND EXPLOITATION OF A MINOR**  
**Sectional Analysis**

**Sections 1 and 2** expand the crime of stalking by amending the definition of “nonconsensual contact”. Stalking prohibits a person from engaging in a course of conduct that places another in fear of death or physical injury. “Course of conduct” is defined as repeated acts of nonconsensual conduct. The bill adds two ways that a defendant may contact a victim that is beyond the victim’s consent. First, it includes following or monitoring the victim with a global positioning device. Second, it includes installing or attempting to install a device for observing, recording, or photographing events in the home, workplace, or vehicle of the victim, or on the victim’s personal telephone or computer.

**Section 3** raises the classification of the crime of online enticement of a minor for a person who is not required to register as a sex offender or child kidnapper from a class C felony (maximum term of imprisonment five years) to a class B felony (maximum term of imprisonment 10 years).

**Section 4** raises the classification of the crime of online enticement of a minor for a person who is required to register as a sex offender or child kidnapper from a class B felony (maximum term of imprisonment 10 years) to a class A felony (maximum term of imprisonment 20 years).

**Section 5** raises the classification of the crime of unlawful exploitation of a minor from a class B felony (maximum term of imprisonment 10 years) to a class A felony (maximum term of imprisonment 20 years).

**Section 6** amends the crime of endangering the welfare of a child in the first degree by prohibiting a parent or guardian from leaving a child under 16 years of age with a person who is required to register as a child kidnapper. The law currently prohibits this conduct if the parent or guardian leaves a child with a person required to register as a sex offender.

**Section 7** adopts a new crime – sending an explicit image of a minor. It would prohibit publishing or distributing an image of a minor’s genitals, anus, or female breast if the minor is under 16 years of age and the publication or distribution was without the consent of the parent or guardian of the minor. The conduct would not apply to a minor under 16 years of age who publishes or distributes the minor’s own image. The prohibited conduct would be a class B misdemeanor (maximum term of imprisonment 90 days) if the person publishes the image to one or two others; a class A misdemeanor (maximum term of imprisonment one year) if the person publishes the image to three or more others; and a

class C felony (maximum term of imprisonment five years) if the person publishes the image on the Internet.

**Section 8** makes a conforming amendment to AS 11.61.120(a)(6), harassment in the second degree, to make it clear that the new crimes of sending an explicit image of a minor in **Section 7** are not included in the crime of harassment in the second degree.

**Section 9** makes two amendments to the crime of distribution of indecent material to minors; first, to clarify that the person must know that the material distributed depicts the prohibited conduct; and second to clarify that if the minor to whom the material is sent is under 16 years of age, the defendant must be reckless as to that circumstance.

**Section 10** adopts two new crimes – misconduct involving confidential information in the first and second degrees. The second degree offense prohibits a person from obtaining the confidential information about another person without legal authority or consent to do so. This conduct would be a class B misdemeanor (maximum term of imprisonment 90 days).

Misconduct involving confidential information in the first degree would prohibit a person from violating the second degree prohibition *and* using the confidential information to commit a crime or to obtain a benefit to which a person is not entitled, or injure or deprive another person of a benefit. This conduct would be a class A misdemeanor (maximum term of imprisonment one year).

**Section 11** clarifies that a person may be prosecuted for online enticement of a minor and for sending an explicit image of a minor if the minor whose image is published, or with whom the person communicated, was in this state, even if the defendant was in another jurisdiction at the time he or she committed the prohibited acts.

**Section 12** amends AS 12.55.125(i) (terms of imprisonment for persons who commit sex offenses) by conforming the terms of imprisonment for persons who commit unlawful exploitation of a minor or online enticement of a minor to the correct level in accord with the changes in **Sections 3 – 5** of the bill.

**Section 13** clarifies the law by stating that while the Commissioner of Corrections provides probation officers to the superior court for the active supervision of person on probation for felony offenses, the Commissioner may, at his or her discretion, also provide probation officers for the active supervision of persons released for misdemeanor offenses.

**Sections 14 and 15** include the applicability and effective date provisions.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 1  
 Bill Version SB 72  
 (S) Publish Date 1/26/11

Identifier (file name): LL1840-DPS-DET-01-12-11 Dept. Affected Public Safety  
 Title "An Act relating to the crimes of stalking, online enticement... of a minor, related offenses, and misconduct..." Appropriation Alaska State Troopers  
 Allocation AST Detachments  
 Sponsor Rules Committee  
 Requester Governor OMB Component Number 2325

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**Why this fiscal note differs from previous version**

Not applicable, initial version.

Prepared by Lt. Rodney Dial  
 Division Alaska State Troopers  
 Approved by Joseph Masters, Commissioner  
Department of Public Safety

Phone 907-247-4480  
 Date/Time 1/24/11 2:20 PM  
 Date 1/12/2011

FISCAL NOTE #1

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. SB 72

**Analysis**

**This bill expands the crime of stalking by adding to the definition of nonconsensual contact, monitoring the victim with a GPS device and using or installing a device to record or photograph events concerning the victim. It also increases penalties for unlawful exploitation of a minor, online enticement of a minor, and provides for the prosecution of offenders from out of state. Finally, this bill adopts new offenses to include: sending explicit images of a minor, and misconduct involving confidential information.**

**Passage of this legislation will have no fiscal impact on the department.**

# FISCAL NOTE

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

Fiscal Note Number 2  
Bill Version SB 72  
(S) Publish Date 1/26/11

Identifier (file name): 1840-LAW-CRIM-01-11-11 Dept. Affected Law  
Title An act relating to crimes of stalking, online enticement, and exploitation Appropriation Criminal  
of a minor, harassment, distribution of indecent material to a minor, and misconduct. Allocation Criminal Justice Litigation  
Sponsor Rules  
Requester Request of the Governor OMB Component Number 2203

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**Why this fiscal note differs from previous version**

Prepared by Dave Blaisdell, Director  
Division Administrative Services  
Approved by John J. Burns, Attorney General  
Department of Law

Phone 465-3673  
Date/Time 1/11/11 12:00 AM  
Date 1/11/2011

FISCAL NOTE #2

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. SB 72

**Analysis**

This bill amends the law relating to stalking by adding to the definition of nonconsensual conduct methods of contacting people with modern technology such as global positioning systems. It makes a clarifying amendment to AS 11.51.100, which prohibits endangering the welfare of a minor. It adopts new statutes to prohibit sending an explicit image of a minor and misconduct involving confidential information. It also increases the penalties for the crimes of online enticement of a minor and unlawful exploitation of a minor. The bill makes it clear that the commissioner of corrections may, in his or her discretion, provide supervised probation to a person on probation for conviction of a misdemeanor.

Although the bill would adopt new crimes we believe that they can be prosecuted with current resources.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 3  
 Bill Version SB 72  
 (S) Publish Date 1/26/11

1840-DOA-PDA-1-12-11  
 Title An Act relating to the crimes of stalking, online enticement ...  
 Sponsor Rules Committee  
 Requester Governor  
 Dept. Affected Administration  
 Appropriation Legal and Advocacy Services  
 Allocation Public Defender Agency  
 OMB Component Number 1631

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	***		***	***	***	***	***	***

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>								

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**Why this fiscal note differs from previous version**

Prepared by Quinlan Steiner, Director  
 Division Public Defender Agency  
 Approved by John Cramer, Deputy Commissioner  
Department of Administration

Phone 907 334-4414  
 Date/Time 1/12/11 2:45 PM  
 Date \_\_\_\_\_

**Analysis**

This bill expands the definition of "nonconsensual contact" under stalking; creates a new crime for sending an explicit image of a minor without the consent of the minor's parent; and creates new crimes for obtaining confidential information of another person.

The bill also provides for the prosecution of an out of state individual for online enticement of a minor if the communications involve an individual in the State of Alaska. Finally, the bill specifically permits the Department of Corrections to provide active supervision to a person placed on probation for a misdemeanor offense.

Expanding the definition of nonconsensual contact, creating additional crimes, and providing for supervised misdemeanor probation will likely result in an increase in cases assigned to the Public Defender Agency. It is not possible to reliably predict the number of cases that will be assigned to the Agency, however. The Agency, therefore, submits an indeterminate fiscal note.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 4  
 Bill Version SB 72  
 (S) Publish Date 1/26/11

Identifier (file name) 1840-DOC-OC-01-20-11 Dept. Affected DOC  
 Title "An Act relating to the crimes of stalking, online enticement of a minor, unlawful exploitation of a minor, endangering..." Appropriation Administration and Support  
 Allocation Office of the Commissioner  
 Sponsor Rules Committee  
 Requester Governor OMB Component Number 684

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	**	**	**	**	**	**	**	**

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	**	**	**	**	**	**	**	**

Estimate of any current year (FY2011) cost                     \*\*                    

**POSITIONS**

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**Why this fiscal note differs from previous version**

This is the first version of the bill

Prepared by Leslie Houston, Director  
 Division DOC Admin. Services  
 Approved by Joe Schmidt, Commissioner  
DOC

Phone 465-3339  
 Date/Time 01/25/11 1:00 p.m.  
 Date 1/25/2011

FISCAL NOTE #4

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. SB 72

**Analysis**

DOC averages two new incarcerations per year for the crime of enticement of a minor. This bill would increase the penalty for this crime from a Class C felony to a Class B felony. This change has the potential to increase mandays by 10,220 in FY12 thru FY17. Applying the current cost of care (\$134.21 per day), the increase of cost could be in the range of \$0.0 to \$1,371.60 to DOC.

DOC averages two incarcerations per year for the crime of online enticement of a minor. This bill increases the penalty for this crime from a Class B felony to a Class A felony if the defendant was, at the time of the offense, a registered or required to register as a sex offender or child kidnapper. This would increase the penalty three years. Applying the current daily cost of care (\$134.21 per day), this could potentially increase costs in the range of \$0.0 to \$734.80 to DOC.

DOC averages one new incarceration per year for the crime of unlawful exploitation of a minor. This bill would increase the penalty for this crime from a Class B felony to a Class A felony. This would increase the penalty three years. This has the potential to increase mandays by 5,475 beginning in FY12 thru FY17. Applying the current daily cost of care (\$134.21 per day) could potentially add costs in the range of \$0.0 to \$734.80 to DOC.

Other provisions that the department is unable to quantify at this time but will closely monitor for potential fiscal impact are as follows:

- Adding Monitoring a Person with a Global Positioning Device or Similar Technology Means
- Adding Child Kidnapper to 2(A) under AS12.63
- Adding Sending and Explicit Image of a Minor in the Degree and Second Degree to Statute
- Adding Crimes Involving Minors Committed Out of State, Specifically Online Enticement to Statute
- Adding Online Enticement of a Minor to Statute